Decision 2004-002

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Direct Energy Regulated Services

Gas Default Rate Tariff
Terms and Conditions of Default Rate Service and
Electricity Regulated Rate Tariff Terms and Conditions of Regulated Rate Service

January 13, 2004

Alberta Energy and Utilities Board

105-01909/

Direct Energy Regulated Services

Gas Default Rate Tariff
Terms and Conditions of Default Rate Service and
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January 13, 2004

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2004-002: Direct Energy Regulated Services
Gas Default Rate Tariff Terms and Conditions of Default Rate Service and
Electricity Regulated Rate Tariff Terms and Conditions of Regulated Rate Service
Application No. 1302109

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

DIRECT ENERGY REGULATED SERVICES
GAS DEFAULT RATE TARIFF TERMS AND
CONDITIONS OF DEFAULT RATE SERVICE AND
ELECTRICITY REGULATED RATE TARIFF TERMS
AND CONDITIONS OF REGULATED RATE SERVICE

Decision 2004-002
Application No. 1302109
File No. 6405-20-1

1 INTRODUCTION

The Alberta Energy and Utilities Board (the Board) issued Decision 2003-106 on December 18, 2003, respecting an application by Direct Energy Regulated Services (DERS) for approval of a gas Default Rate Tariff (DRT) and electric Regulated Rate Tariff (RRT).

In Decision 2003-106 the Board directed that DERS make certain changes to its proposed Terms and Conditions of Default Rate Service (DRS T&C) and Terms and Conditions of Regulated Rate Service (RRS T&C) (jointly the T&C) and directed DERS to refile its proposed DRS T&C and its proposed RRS T&C with the Board and all registered Interveners. Decision 2003-106 then stated that:

> The Board will then confirm that the changes have been properly included in the refiled T&C and upon such confirmation will approve the refiled T&C.[1]

DERS submitted its refiled T&C on December 30, 2003.

2 VIEWS OF THE BOARD

The Board has reviewed the filed T&C submitted by DERS and confirms that DERS has followed the Board's directions in making the changes to the T&C documents. The Board therefore approves the T&C as attached in Appendix 1 and 2. The Board notes that some minor typographical corrections were made to the T&C as filed by DERS. The specific changes are noted in Appendix 3 of this Decision.

The Board also notes from Decision 2003-106 that further refinements to the T&C are expected and that a collaborative process may be desirable.

> The Board notes the suggestion made by some parties, and agreed to by DERS, that the T&C can be addressed in greater detail through a negotiated process between DERS and customer group representatives. The Board agrees that this is often a more efficient means to deal with the issues that arise in the T&C, rather than through a hearing process. However, the Board notes that due to the timing of this proceeding and the desire of DERS to commence operation as the supplier of DRT and RRT service as soon as possible, it is necessary that T&C be in place for the commencement of operations by DERS. The Board considers that future proposed T&C would benefit from some form of

[1] Decision 2003-106, p. 154

consultative process between DERS and customer representatives. The Board expects that such a process would take place prior to or in conjunction with the next DERS rate application.

The Board is addressing only certain changes proposed by Interveners to the T&C at this time. These include those sections that the Board considers should be changed immediately. The Board considers that other changes are best left until negotiations between customer representatives and DERS can take place. The Board is also commenting on some further sections where it does not consider that changes are necessary at this time.[2]

The Board expects that DERS will file appropriate changes to the T&C in due course.

[2] Decision 2003-106, pp 150-151

3 ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Gas Default Rate Tariff Terms and Conditions of Default Rate Service, attached as Appendix 1, are approved effective upon Direct Energy Regulated Services assuming the role of the Default Supply provider.

(2) The Electricity Regulated Rate Tariff Terms and Conditions of Regulated Rate Service, attached as Appendix 2, are approved effective upon Direct Energy Regulated Services assuming the role of the Regulated Rate Tariff service provider.

Dated in Calgary, Alberta on January 13, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

B. T. McManus, Q.C.
Presiding Member

J. I. Douglas, FCA
Member

W. K. Taylor
Acting Member

APPENDIX 1 – GAS DEFAULT RATE TARIFF TERMS AND CONDITIONS OF DEFAULT RATE SERVICE

"App 1 Gas Default Rate Tariff TandCs.d

(Consists of 21 pages)

APPENDIX 1

Direct Energy Regulated Services
Gas Default Rate Tariff

Terms and Conditions of Default Rate Service

Pursuant to the Provisions of the
***Gas Utilities Act* and the**
Default Gas Supply Regulation

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TERMS AND CONDITIONS OF DEFAULT RATE SERVICE

ARTICLE 1
PREAMBLE

ATCO Gas and Pipelines Ltd. ("ATCO Gas") has made arrangements with Direct Energy Regulated Services ("Direct Energy RS"), a business unit of Direct Energy Marketing Limited, to provide Default Rate Service to Customers in the service territory of ATCO Gas. Direct Energy RS provides Default Rate Service to Customers under its Default Rate Tariff that has been approved by the Board.

Direct Energy RS' Default Rate Tariff includes these Terms and Conditions and the attached Price Schedule that sets out the prices for certain services related to the provision of Default Rate Service.

Direct Energy's Default Rate Tariff is available for public inspection at Direct Energy RS' website www.directenergyregulatedservices.com and during normal business hours at Direct Energy's Calgary business office.

ARTICLE 2
DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in the Default Rate Tariff, shall have the following meanings:

"ATCO Gas" means ATCO Gas and Pipelines Ltd.

"ATCO Terms and Conditions" means ATCO Gas' Terms and Conditions for Distribution Access Service and Terms and Conditions of Distribution Service Connections, as the case may be.

"Board" means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*, R.S.A., 2000, c. A-17, as amended from time to time.

"Business Day" means any day other than Saturday, Sunday or a holiday as defined in the *Interpretation* Act, R.S.A., 2000, c. I-8.

"Customer" has the meaning ascribed to that term in the GUA.

"Customer of Record" means the Customer for whom Direct Energy RS has opened an account pursuant to Section 4.1.

"Default Rate Service" means the service that is required by the GUA to be provided in accordance with a default rate tariff.

"Default Rate Tariff" means Direct Energy's default rate tariff approved by the Board including these Terms and Conditions and the Price Schedule.

"Direct Energy RS" means Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited.

"Facilities" means physical plant including, pipes, meters, works, equipment and machinery.

"Force Majeure" means circumstances not reasonably within the control of Direct Energy RS, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, interruption of supply, goods or services including Gas or Gas Distribution Service, the

intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise.

"Gas" has the meaning ascribed to that term in the GUA.

"Gas Distribution Service" has the meaning ascribed to that term in the GUA and provided to Customers by means of the Gas Distribution System of ATCO Gas.

"Gas Distribution System" has the meaning ascribed to that term in the GUA.

"Gas Distribution Tariff" means ATCO Gas' tariff for the provision of Gas Distribution Service approved by the Board and as amended from time to time.

"Gas Services" has the meaning ascribed to that term in the GUA.

"GUA" means the *Gas Utilities Act*, R.S.A. 2000, c.G-5 -, including the regulations enacted thereunder, as amended.

"Person" means a person, firm, partnership, corporation, organization or association, and includes an individual member thereof.

"Price Schedule" means the schedule of service items and prices attached to these Terms and Conditions.

"Rate Schedules" means the rate schedules to the Regulated Rate Tariff.

"**Retailer**" has the meaning ascribed to that term in the GUA.

"Service Connection" means the Facilities of a Gas Distribution System owned by ATCO Gas that delivers Gas to a Site.

"Site" means the point where a Customer receives Gas by means of a Service Connection.

"Terms and Conditions" means these Terms and Conditions of Default Rate Service, as amended from time to time.

2.2 Conflicts

If there is any conflict between these Terms and Conditions and a provision expressly set out in an order of the Board, the provision of the Board's order shall govern.

If there is any conflict between these Terms and Conditions and a provision of the GUA, the provision of the GUA shall govern.

2.3 Headings

The division of these Terms and Conditions into sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Extended Meanings

In these Terms and Conditions, words importing the singular number only shall include the plural and visa versa, words importing the masculine gender shall include the feminine and neuter gender and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

2.5 Charges and Fees

Except for Section 8.2, all charges and fees referred to in these Terms and Conditions are as set out in the Price Schedule.

ARTICLE 3
GENERAL PROVISIONS

3.1 Effective Date

These Terms and Conditions have been approved by the Board in the Decision, and are effective on the date, shown below.

3.2 Customers Bound by Terms and Conditions

The Default Rate Tariff and the Rate Schedules approved by the Board apply to each Customer. As a condition of obtaining Default Rate Service, the Customer agrees to be bound by these Term and Conditions and the attached Price Schedule.

3.3 Modification of Default Rate Tariff

No agreement can provide for the waiver or amendment of any part of these Terms and Conditions unless such agreement is first filed with and approved by the Board.

3.4 Regulatory Approval and Amendment

Direct Energy RS may only amend these Terms and Conditions with approval of the Board. Minor wording changes may be made by Direct Energy RS filing a notice of amendment with the Board. The amendment will take effect 60 days after such notice is filed unless the Board directs otherwise. Whenever the Board approves an amendment to these Terms and Conditions or an amendment otherwise takes effect, these Terms and Conditions will be revised to incorporate such amendments.

3.5 Applicable Taxes

The Customer shall pay all taxes, fees or assessments that Direct Energy RS is required to collect from time to time as required pursuant to any statute, regulation, or other governmental directive or order or decision of the Board that relates to Default Rate Service.

3.6 Use of Default Rate Service

Default Rate Service is provided for the Customer's use only, and the Customer shall not sell or otherwise permit another person to acquire such service.

ARTICLE 4
REGULATED RATE SERVICE

4.1 Requirements for Obtaining Default Rate Service

Eligibility for a prospective Customer to obtain Default Rate Service shall be determined in accordance with the GUA.

At its sole discretion, Direct Energy RS may require any potential residential Customer to provide such proof of identification, as Direct Energy RS considers appropriate in the circumstances.

A potential Customer, other than a residential Customer, who is not receiving Default Rate Service from Direct Energy RS, must complete an application in writing to obtain Default Rate Service at a Site. Direct Energy RS will endeavor to open an account and commence Default Rate Service at a Site within 7 days of receiving a completed application from a Customer. Expedited connection of Default Rate Service is available at an additional charge in accordance with the Price Schedule. If Direct Energy RS approves a Customer's application for Default Rate Service, Direct Energy RS will open an account for the Customer for Default Rate Service at the applied for Site and the Customer shall be the "Customer of Record" for the Site, and will pay

Direct Energy RS an account connection charge for opening the account in accordance with the Price Schedule.

The Customer will be responsible to pay to Direct Energy RS all amounts charged to the account from the time the account is opened until it is closed as provided in Section 6.1, or if Default Rate Service is discontinued or disconnected as provided in Sections 4.4 and 8.4.

4.2 Refusal of Default Rate Service

Direct Energy RS reserves the right to refuse to provide Default Rate Service to a prospective Customer when:

(a) the prospective Customer has not provided the deposit required by Direct Energy RS pursuant to Section 5.1;

(b) the prospective Customer cannot demonstrate a satisfactory credit rating or credit history;

(c) the prospective Customer has an outstanding balance with Direct Energy RS for Default Rate Service; or

(d) the prospective Customer has not complied with the applicable provisions of these Terms and Conditions.

Direct Energy RS reserves the right to refuse to provide Default Rate Service to a prospective Customer at a Site when a previous Customer at the Site had a history of non-payment and Direct Energy RS reasonably believes that the defaulting Customer would continue to occupy the premises located at the Site.

4.3 Credit Information

Direct Energy RS may at any time request the following information:

(a) from a prospective Customer, such information that Direct Energy RS considers reasonably necessary to determine the prospective Customer's credit history and credit risk; and

(b) from an existing Customer, such information that Direct Energy RS considers reasonably necessary to determine:

(i) the Customer's credit history, and

(ii) the creditworthiness of the Customer when the Customer has paid a bill late more than once in any four month period or where Direct Energy RS has reason to believe that the Customer may be a credit risk.

4.4 Failure to Provide Information Service

If a prospective Customer or existing Customer fails to provide information requested in accordance with Section 4.3 and does not provide a security deposit in accordance with Article 5, then Direct Energy RS may either:

(a) refuse to provide Default Rate Service to the prospective Customer, or

(b) discontinue or request a disconnection of Default Rate Service to the existing Customer.

4.5 Customer Change of Name or Information

The Customer must notify Direct Energy RS as soon as reasonably possible of a change of name, mailing address or telephone number. Such notification shall be provided in writing if requested by Direct Energy RS.

ARTICLE 5
FINANCIAL SECURITY REQUIREMENTS

5.1 Requirement for Deposit

Direct Energy RS, in its sole discretion, may require a deposit or an increase in an existing deposit by a Customer in circumstances it consider appropriate, including in the following circumstances:

(a) if the prospective Customer making the application for service cannot demonstrate a satisfactory credit rating to Direct Energy RS;

(b) the Customer has paid a bill late more than once in any four month period;

(c) the Customer has issued more than one cheque that has been returned for non-sufficient funds in any four month period;

(d) there has been more than a 50% increase in the Customer's average monthly consumption of Gas over the prior four month period; or

(e) the Customer makes a request for reconnection of service after having been disconnected for non-payment.

5.2 Waiver of Deposit Requirement

Direct Energy RS, in its sole discretion, may waive the requirement for a deposit by Customer.

5.3 Maximum Deposit

The maximum deposit Direct Energy RS will require from a Customer under this Default Rate Tariff is equal to 30% of the annual total charge payable by the Customer, as reasonably estimated by Direct Energy RS.

5.4 Use of Deposit for Non-Payment

A deposit provided by a Customer may be applied against any amounts owing for unpaid bills.

5.5 Return of Deposit

Subject to Section 5.4, a Customer's deposit will be returned when the Customer's Default Rate Service is terminated and the Customer's account is closed. A Customer's deposit may be returned to the Customer after a satisfactory payment history over a period of 12 consecutive months but no later than a period of 18 consecutive months of satisfactory payment history.

5.6 Interest Payable on Deposits

Interest will be paid on a deposit at the end of each calendar year or when the Customer's account is closed. Interest will be calculated using simple interest on the daily balance of any cash deposit held by Direct Energy RS in respect of the Customer. The interest rate applicable for each year is the greater of 2.5 percent per annum or the interest rate specified under the *Residential Tenancies Act*.

Interest payable under this section may be applied against any amounts owing for unpaid bills.

ARTICLE 6
CLOSING AN ACCOUNT

6.1 Notice to Close an Account

A Customer may close an account for Default Rate Service at a Site by giving Direct Energy RS at least three full Business Days notice to close the account.

6.2 Responsibility for Payment

The Customer is responsible for payment for all Default Rate Service provided to the Customer up to the time Direct Energy RS has closed the account and, until payment for final charges for consumption has been made.

If a Customer's Default Rate Service is discontinued by Direct Energy RS or disconnected under the ATCO Terms and Conditions, the Customer is responsible for payment for all Default Rate Service provided to the Customer up to the time of such discontinuation or disconnection, and until payment for final charges for consumption has been made.

ARTICLE 7
MEASUREMENT OF ENERGY CONSUMPTION

7.1 Measurement provided by ATCO Gas

ATCO Gas provides to Direct Energy RS under its Gas Distribution Tariff meter readings and estimates of consumption of Gas by Customers. Billings to Customers under these Terms and Conditions shall be based on those meter readings and estimates. Direct Energy RS assumes no liability to the Customer for meter readings and estimates provided by ATCO Gas.

7.2 Meter Testing

If a Customer believes his or her meter to be in error, Direct Energy RS will arrange to have the meter tested by ATCO Gas at the request of the Customer and the Customer will pay Direct Energy RS all charges for meter testing incurred by Direct Energy RS in accordance with the ATCO Terms and Conditions.

ARTICLE 8
BILLINGS AND PAYMENT

8.1 Responsibility to Pay

A bill issued to the Customer by Direct Energy RS shall be paid in full by the due date specified on the bill, such due date not to be less than 13 business days following the date of issuance of the bill. If a Customer loses their bill, they shall not be relieved of their obligation to pay the bill in full by the due date.

8.2 Late Payment Charge

If a Customer does not pay a bill in full by the due date, a late payment charge of 1.5% per month of the amount outstanding will be applied. The outstanding unpaid amount, including the interest charge, shall be added to the charges that become due and payable in the next bill.

8.3 Remedies for Non-Payment

If a bill remains unpaid after the due date, Direct Energy RS may require a deposit or an increase in the amount of an existing deposit.

Failure to pay a bill may result in Direct Energy RS either discontinuing the Customer's Default Rate Service or requesting a disconnection of such service.

In addition, Direct Energy RS may commence collection action. Prudent and reasonable collection costs incurred by Direct Energy RS will be added to the Customer's bill.

If a Customer's Default Rate Service is discontinued by Direct Energy RS or disconnected under the ATCO Terms and Conditions, any unpaid charges in the account may be transferred to any other Default Rate Service account held by the same Person and any deposit held in respect of such account may be applied against the unpaid charges.

8.4 Restoration of Default Rate Service

In order for Default Rate Service to be restored after it has been discontinued or disconnected for non-payment, the Customer must pay all outstanding bills in full, provide a deposit to Direct Energy RS and pay the reconnection fee prescribed in the Price Schedule.

8.5 Partial Payments

Partial payments on an account will be applied to the unpaid amounts outstanding on the longest outstanding bills.

8.6 Dishonored Cheques

In addition to any late payment charge under Section 8.2 of these Terms and Conditions, a Customer whose cheque is dishonored shall pay the charge as specified in the Price Schedule.

8.7 Novelty Payments

Direct Energy RS may refuse to accept payment when a Customer attempts to make payment by a cheque drawn on a form other than a bank cheque. Direct Energy RS follows the coin acceptance limitations specified in the *Currency Act*, S.C. 1985 c. C-52 as follows:

Payment in coin may be made to the maximum amount of:

Forty dollars if the denomination is two dollars or greater but does not exceed ten dollars,
Twenty-five dollars if the denomination is one dollar,
Ten dollars if the denomination is ten cents or greater but less than one dollar,
Five dollars if the denomination is five cents, and
Twenty-five cents if the denomination is one cent.

ARTICLE 9
RESPONSIBILITY AND LIABILITY

9.1 Interruption of Default Rate Service

Direct Energy RS does not own or operate the Gas Distribution System and does not guarantee continuous Default Rate Service.

Direct Energy RS will endeavor at all times to provide regular and uninterrupted Default Rate Service to Customers.

9.2 Force Majeure

Direct Energy RS, is relieved of its obligations under the Default Rate Tariff and these Terms and Conditions, and shall not be liable for any failure to perform any service under the Default Rate Tariff or any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

9.3 Limitation of Direct Energy RS' Liability to Customer

Except for direct physical damage, loss or injury to a Customer or a Customer's property resulting from the negligence or willful misconduct of Direct Energy RS or its employees, agents or contractors acting within the scope of their employment, Direct Energy RS shall not be liable to a Customer, whether in tort, contract, strict liability or otherwise, for any loss, damage, expense, charge, cost or other liability of any kind suffered or incurred by the Customer arising out of or in any way connected with any interruption, defect, irregularity, failure, curtailment or reduction in Default Rate Service. Under no circumstances or for any reason shall Direct Energy RS be liable to a customer for any loss, injury or damage of an indirect, special, exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss,

damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for loss, injury or damage, must be filed with Direct Energy RS within 180 days from the date of occurrence of the incident that is the subject of the claim, failing which Direct Energy RS shall have no liability to the Customer for any such loss, injury or damage.

9.4 Indemnification by Customer

Each Customer shall indemnify and hold Direct Energy RS and its employees, agents and contractors harmless from and against any claim for any loss, damage, expense, charge, cost, penalty or other liability of any kind suffered or incurred by Direct Energy RS (including charges or liability arising under the Gas Distribution Tariff of ATCO Gas) arising out of or in any way connected with any failure by the Customer or its Facilities to comply with any of the provisions of the Gas Distribution Tariff of ATCO Gas applicable to the Customer or its Facilities or any legal or regulatory requirement related to Gas Distribution Service required to be complied with by the Customer.

Without limiting the generality of the foregoing, Customer shall be liable to compensate Direct Energy RS for any costs, expenses or liabilities that it incurs under the provisions of the ATCO Terms and Conditions arising out of or connected with any action or inaction of the Customer related to Default Rate Service.

9.5 Indemnification by Direct Energy RS

Direct Energy RS shall indemnify and hold a Customer harmless from and against direct physical loss, injury or damage to the Customer or the Customer's property resulting from the negligence or willful misconduct of Direct Energy RS or its employees, agents or contractors acting within the scope of their employment. Under no circumstances or for any reason shall Direct Energy be liable to a Customer for any loss, injury or damage of an indirect, special,

exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss, damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for indemnity for loss, injury or damage, must be filed with Direct Energy RS within 180 days from the date of occurrence of the incident that is the subject of the claim, failing which Direct Energy RS shall have no obligation to indemnify the Customer for any such loss, injury or damage.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Resolution by Direct Energy RS and Customers

If any dispute between Direct Energy RS and a Customer arises at any time in connection with these Terms and Conditions, Direct Energy RS and the Customer, acting reasonably and in good faith, shall use their reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this Section 10.1, a senior representative of Direct Energy RS and the Customer shall meet to attempt to resolve the dispute.

10.2 Resolution by a Third Party

If any dispute has not been resolved pursuant to Section 10.1 within a reasonable time, Direct Energy RS and the Customer may pursue the matter with the Board if the matter is within the Board's jurisdiction or pursue in Alberta any remedies available to them under applicable laws, including arbitration pursuant to the *Arbitration Act (Alberta)*.

ARTICLE 11
MISCELLANEOUS

11.1 Compliance with Applicable Legal Authorities

Direct Energy RS and the Customer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of governmental authorities having applicable jurisdiction. Direct Energy RS will not be required to violate, directly or indirectly, or become a party to a violation of any requirement of any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Default Rate Service to any Customer. Direct Energy RS' obligation to provide any Default Rate Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the Default Rate Service will have been obtained and will be in force during the period of Default Rate Service.

11.2 No Assignment

Service under the Default Rate Tariff is not assignable.

11.3 No Waiver

The failure of Direct Energy RS to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions or applicable legislation, or to enforce any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder or thereunder, which shall remain in full force and effect. No term or condition or breach of these Terms and Conditions shall be waived unless the waiver is in writing and duly executed by an authorized officer of Direct Energy RS.

Price Schedule

1.	Connection Charge (Section 4.1)	Amount of any applicable ATCO Gas charge plus $10.00
2.	Reconnection Charge (Section 8.4)	Amount of any applicable ATCO Gas charge plus $25.00
3.	Meter Reads, Off-Cycle Meter Reads or Meter Disputes	Amount of any applicable ATCO Gas charge
4.	Meter Handling or Meter Relocations	Amount of any applicable ATCO Gas charge
5.	Customer Usage Information	Amount of any applicable ATCO Gas charge
6.	Dishonored Cheque	$25.00

APPENDIX 2 –ELECTRICITY REGULATED RATE TARIFF TERMS AND CONDITIONS OF REGULATED RATE SERVICE

"App 2 Electricity
Regulated Rate Tarif

(Consists of 23 pages)

APPENDIX 2

Direct Energy Regulated Services
Electricity Regulated Rate Tariff

Terms and Conditions of Regulated Rate Service

Pursuant to the Provisions of the
***Electric Utilities Act* and the**
Regulated Default Supply Regulation

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TERMS AND CONDITIONS OF REGULATED RATE SERVICE

ARTICLE 1
PREAMBLE

ATCO Electric Ltd. ("ATCO Electric") has made arrangements with Direct Energy Regulated Services ("Direct Energy RS"), a business unit of Direct Energy Marketing Limited, to provide Regulated Rate Service to Eligible Customers in the service area of ATCO Electric. Direct Energy RS provides Regulated Rate Service to Eligible Customers under its Regulated Rate Tariff that has been approved by the Board.

Direct Energy RS' Regulated Rate Tariff includes these Terms and Conditions and the attached Price Schedule that sets out the prices for certain services related to the provision of Regulated Rate Service.

Direct Energy's Regulated Rate Tariff is available for public inspection at Direct Energy RS' website www.directenergyregulatedservices.com and during normal business hours at Direct Energy's Calgary business office.

ARTICLE 2
DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in the Regulated Rate Tariff, shall have the following meanings:

"ATCO Electric" means ATCO Electric Ltd.

"ATCO Terms and Conditions" means ATCO Electric's Terms and Conditions for Distribution Access Service and Terms and Conditions of Distribution Service Connections, as the case may be.

"Board" means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*, R.S.A., 2000, c. A-17, as amended from time to time.

"Business Day" means any day other than Saturday, Sunday or a holiday as defined in the *Interpretation* Act, R.S.A., 2000, c. I-8.

"Customer" means a customer that is an Eligible Customer.

"Customer of Record" means the Customer for whom Direct Energy RS has opened an account pursuant to Section 4.1.

"Direct Energy RS" means Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited.

"Distribution Access Service" has the meaning ascribed to that term in the EUA and provided to Customers by means of ATCO Electric's Distribution System.

"Distribution System" has the meaning ascribed to that term in the EUA.

"Distribution Tariff" means ATCO Electric's tariff for the provision of Distribution Access Service approved by the Board and as amended from time to time.

"Electricity" has the meaning ascribed to that term in the EUA, expressed in kilowatt hours.

"Electricity Services" has the meaning ascribed to that term in the EUA.

"Eligible Customer" has the meaning ascribed to that term in the *Regulated Default Supply Regulation*, AR **168**/2003, as amended.

"EUA" means the *Electric Utilities Act*, S.A. 2003, c.E - **5.1,** including the regulations enacted thereunder, as amended.

"Facilities" means physical plant including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery.

"Force Majeure" means circumstances not reasonably within the control of Direct Energy RS, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, interruption of supply, goods or services including Electricity or Distribution Access Service, the intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise.

"Independent System Operator" means the meaning ascribed to that term in the EUA.

"Interconnected Electric System" has the meaning ascribed to that term in the EUA.

"Person" means a person, firm, partnership, corporation, organization or association, and includes an individual member thereof.

"Price Schedule" means the schedule of service items and prices attached to these Terms and Conditions.

"Rate Schedules" means the rate schedules to the Regulated Rate Tariff.

"Regulated Rate Service" means the service that is required by the EUA to be provided in accordance with a regulated rate tariff.

"Regulated Rate Tariff" means Direct Energy's regulated rate tariff approved by the Board including these Terms and Conditions and the Price Schedule.

"Retailer" has the meaning ascribed to that term in the EUA.

"Service Connection" means the Facilities of ATCO Electric's Distribution System that deliver Electricity to a Site.

"Site" means the point where a Customer receives Electricity by means of a Service Connection.

"Terms and Conditions" means these Terms and Conditions of Regulated Rate Service, as amended from time to time.

2.2 Conflicts

If there is any conflict between these Terms and Conditions and a provision expressly set out in an order of the Board, the provision of the Board's order shall govern.

If there is any conflict between these Terms and Conditions and a provision of the EUA, the provision of the EUA shall govern.

2.3 Headings

The division of these Terms and Conditions into sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Extended Meanings

In these Terms and Conditions, words importing the singular number only shall include the plural and visa versa, words importing the masculine gender shall include the feminine and

neuter gender and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

2.5 Charges and Fees

Except for Section 8.2, all charges and fees referred to in these Terms and Conditions are as set out in the Price Schedule.

ARTICLE 3
GENERAL PROVISIONS

3.1 Effective Date

These Terms and Conditions have been approved by the Board in the Decision, and are effective on the date, shown below.

3.2 Customers Bound by Terms and Conditions

The Regulated Rate Tariff and the Rate Schedules approved by the Board apply to each Customer. As a condition of obtaining Regulated Rate Service, the Customer agrees to be bound by these Term and Conditions and the attached Price Schedule.

3.3 Modification of Regulated Rate Tariff

No agreement can provide for the waiver or amendment of any part of these Terms and Conditions unless such agreement is first filed with and approved by the Board.

3.4 Regulatory Approval and Amendment

Direct Energy RS may only amend these Terms and Conditions with approval of the Board. Minor wording changes may be made by Direct Energy RS filing a notice of amendment with the Board. The amendment will take effect 60 days after such notice is filed unless the Board directs otherwise. Whenever the Board approves an amendment to these Terms and Conditions or an amendment otherwise takes effect, these Terms and Conditions will be revised to incorporate such amendments.

3.5 Applicable Taxes

The Customer shall pay all taxes, fees or assessments that Direct Energy RS is required to collect from time to time as required pursuant to any statute, regulation, or other governmental directive or order or decision of the Board that relates to Regulated Rate Service.

3.6 Use of Regulated Rate Service

Regulated Rate Service is provided for the Customer's use only, and the Customer shall not sell or otherwise permit another person to acquire such service.

ARTICLE 4
REGULATED RATE SERVICE

4.1 Requirements for Obtaining Regulated Rate Service

Eligibility for a prospective Customer to obtain Regulated Rate Service shall be determined in accordance with the EUA.

At its sole discretion, Direct Energy RS may require any potential residential Customer to provide such proof of identification as Direct Energy RS considers appropriate in the circumstances.

A potential Customer, other than a residential Customer, who is not receiving Regulated Rate Service from Direct Energy RS, must complete an application in writing to obtain Regulated Rate Service at a Site. Direct Energy RS will endeavor to open an account and commence Regulated Rate Service at a Site within 7 days of receiving a completed application from a Customer. Expedited connection of Regulated Rate Service is available at an additional charge in accordance with the Price Schedule.

If Direct Energy RS approves a Customer's application for Regulated Rate Service, Direct Energy RS will open an account for the Customer for Regulated Rate Service at the applied for Site and the Customer shall be the "Customer of Record" for the Site, and will pay Direct Energy RS an account connection charge for opening the account in accordance with the Price Schedule.

The Customer will be responsible to pay to Direct Energy RS all amounts charged to the account from the time the account is opened until it is closed as provided in Section 6.1, or if Regulated Rate Service is discontinued or disconnected as provided in Sections 4.4 and 8.4.

4.2 Refusal of Regulated Rate Service

Direct Energy RS reserves the right to refuse to provide Regulated Rate Service to a prospective Customer when:

(a) the prospective Customer has not provided the deposit required by Direct Energy RS pursuant to Section 5.1;

(b) the prospective Customer cannot demonstrate a satisfactory credit rating or credit history;

(c) the prospective Customer has an outstanding balance with Direct Energy RS for Regulated Rate Service; or

(d) the prospective Customer has not complied with the applicable provisions of these Terms and Conditions.

Direct Energy RS reserves the right to refuse to provide Regulated Rate Service to a prospective Customer at a Site when a previous Customer at the Site had a history of non-payment and Direct Energy RS reasonably believes that the defaulting Customer would continue to occupy the premises located at the Site.

4.3 Credit Information

Direct Energy RS may at any time request the following information:

(a) from a prospective Customer, such information that Direct Energy RS considers reasonably necessary to determine the prospective Customer's credit history and credit risk; and

(b) from an existing Customer, such information that Direct Energy RS considers reasonably necessary to determine:

(i) the Customer's credit history, and

(ii) the creditworthiness of the Customer when the Customer has paid a bill late more than once in any four month period or where Direct Energy RS has reason to believe that the Customer may be a credit risk.

4.4 Failure to Provide Information

If a prospective Customer or existing Customer fails to provide information requested in accordance with Section 4.3 and does not provide a security deposit in accordance with Article 5, then Direct Energy RS may either:

(a) refuse to provide Regulated Rate Service to the prospective Customer, or

(b) discontinue or request a disconnection of Regulated Rate Service to the existing Customer.

4.5 Customer Change of Name or Information

The Customer must notify Direct Energy RS as soon as reasonably possible of a change of name, mailing address or telephone number. Such notification shall be provided in writing if requested by Direct Energy RS.

ARTICLE 5
FINANCIAL SECURITY REQUIREMENTS

5.1 Requirement for Deposit

Direct Energy RS, in its sole discretion, may require a deposit or an increase in an existing deposit by a Customer in circumstances it consider appropriate, including in the following circumstances:

(a) if the prospective Customer making the application for service cannot demonstrate a satisfactory credit rating to Direct Energy RS;

(b) the Customer has paid a bill late more than once in any four month period;

(c) the Customer has issued more than one cheque that has been returned for non-sufficient funds in any four month period;

(d) there has been more than a 50% increase in the Customer's average monthly consumption of Electricity over the prior four month period; or

(e) the Customer makes a request for reconnection of service after having been disconnected for non-payment.

5.2 Waiver of Deposit Requirement

Direct Energy RS, in its sole discretion, may waive the requirement for a deposit by Customer.

5.3 Maximum Deposit

The maximum deposit Direct Energy RS will require from a Customer under this Regulated Rate Tariff is equal to 30% of the annual total charge payable by the Customer, as reasonably estimated by Direct Energy RS.

5.4 Use of Deposit for Non-Payment

A deposit provided by a Customer may be applied against any amounts owing for unpaid bills.

5.5 Return of Deposit

Subject to Section 5.4, a Customer's deposit will be returned when the Customer's Regulated Rate Service is terminated and the Customer's account is closed. A Customer's deposit may be returned to the Customer after a satisfactory payment history over a period of 12 consecutive months but no later than a period of 18 consecutive months of satisfactory payment history.

5.6 Interest Payable on Deposits

Interest will be paid on a deposit at the end of each calendar year or when the Customer's account is closed. Interest will be calculated using simple interest on the daily balance of any cash deposit held by Direct Energy RS in respect of the Customer. The interest rate applicable for each year is the greater of 2.5 percent per annum or the interest rate specified under the *Residential Tenancies Act*.

Interest payable under this section may be applied against any amounts owing for unpaid bills.

ARTICLE 6
CLOSING AN ACCOUNT

6.1 Notice to Close an Account

A Customer may close an account for Regulated Rate Service at a Site by giving Direct Energy RS at least three full Business Days notice to close the account.

6.2 Responsibility for Payment

The Customer is responsible for payment for all Regulated Rate Service provided to the Customer up to the time Direct Energy RS has closed the account and, until payment for final charges for consumption has been made.

If a Customer's Regulated Rate Service is discontinued by Direct Energy RS or disconnected under the ATCO Terms and Conditions, the Customer is responsible for payment for all Regulated Rate Service provided to the Customer up to the time of such discontinuation or disconnection, and until payment for final charges for consumption has been made.

ARTICLE 7
MEASUREMENT OF ENERGY CONSUMPTION

7.1 Measurement provided by ATCO Electric

ATCO Electric provides to Direct Energy RS under its Distribution Tariff meter readings and estimates of consumption of Electricity by Customers. Billings to Customers under these Terms and Conditions shall be based on those meter readings and estimates. Direct Energy RS assumes no liability to the Customer for meter readings and estimates provided by ATCO Electric.

7.2 Meter Testing

If a Customer believes his or her meter to be in error, Direct Energy RS will arrange to have the meter tested by ATCO Electric at the request of the Customer and the Customer will pay Direct Energy RS all charges for meter testing incurred by Direct Energy RS in accordance with the ATCO Terms and Conditions.

ARTICLE 8
BILLINGS AND PAYMENT

8.1 Responsibility to Pay

A bill issued to the Customer by Direct Energy RS shall be paid in full by the due date specified on the bill, such due date not to be less than 13 business days following the issuance of the bill. If a Customer loses their bill, they shall not be relieved of the obligation to pay the bill in full by the due date.

8.2 Late Payment Charge

If a Customer does not pay a bill in full by the due date, a late payment charge of 1.5% per month of the amount outstanding will be applied. The outstanding unpaid amount, including the interest charge, shall be added to the charges that become due and payable in the next bill.

8.3 Remedies for Non-Payment

If a bill remains unpaid after the due date, Direct Energy RS may require a deposit or an increase in the amount of an existing deposit.

Failure to pay a bill may result in Direct Energy RS either discontinuing the Customer's Regulated Rate Service or requesting a disconnection of such service.

In addition, Direct Energy RS may commence collection action. Prudent and reasonable collection costs incurred by Direct Energy RS will be added to the Customer's bill.

If a Customer's Regulated Rate Service is discontinued by Direct Energy RS or disconnected under the ATCO Terms and Conditions, any unpaid charges in the account may be transferred to any other Regulated Rate Service account held by the same Person and any deposit held in respect of such account may be applied against the unpaid charges.

8.4 Restoration of Regulated Rate Service

In order for Regulated Rate Service to be restored after it has been discontinued or disconnected for non-payment, the Customer must pay all outstanding bills in full, provide a deposit to Direct Energy RS and pay the reconnection fee prescribed in the Price Schedule.

8.5 Partial Payments

Partial payments on an account will be applied to the unpaid amounts outstanding on the longest outstanding bills.

8.6 Dishonored Cheques

In addition to any late payment charge under Section 8.2 of these Terms and Conditions, a Customer whose cheque is dishonored shall pay the charge as specified in the Price Schedule.

8.7 Novelty Payments

Direct Energy RS may refuse to accept payment when Customer attempts to make payment by a cheque drawn on a form other than a bank cheque. Direct Energy RS follows the coin acceptance limitations specified in the *Currency Act,* S.C. 1985, c. C-52 as follows:

Payment in coin may be made to the maximum amount of:

Forty dollars if the denomination is two dollars or greater but does not exceed ten dollars,
Twenty-five dollars if the denomination is one dollar,
Ten dollars if the denomination is ten cents or greater but less than one dollar,
Five dollars if the denomination is five cents, and
Twenty-five cents if the denomination is one cent.

ARTICLE 9
RESPONSIBILITY AND LIABILITY

9.1 Interruption of Regulated Rate Service

Direct Energy RS does not own or operate the Distribution System or any other part of the Interconnected Electric System and does not guarantee continuous Regulated Rate Service.

Direct Energy RS will endeavor at all times to provide regular and uninterrupted Regulated Rate Service to Customers.

9.2 Force Majeure

Direct Energy RS, is relieved of its obligations under the Regulated Rate Tariff and these Terms and Conditions, and shall not be liable for any failure to perform any service under the Regulated Rate Tariff or any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

9.3 Limitation of Direct Energy RS' Liability to Customer

Except for direct physical damage, loss or injury to a Customer or a Customer's property resulting from the negligence or willful misconduct of Direct Energy RS or its employees, agents or contractors acting within the scope of their employment, Direct Energy RS shall not be liable to a Customer, whether in tort, contract, strict liability or otherwise, for any loss, damage, expense, charge, cost or other liability of any kind suffered or incurred by the Customer arising out of or in any way connected with any interruption, defect, irregularity, failure, curtailment or reduction in Regulated Rate Service. Under no circumstances or for any reason shall Direct

Energy RS be liable to a customer for any loss, injury or damage of an indirect, special, exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss, damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for loss, injury or damage, must be filed with Direct Energy RS within 180 days from the date of occurrence of the incident that is the subject of the claim, failing which Direct Energy RS shall have no liability to the Customer for any such loss, injury or damage.

9.4 Indemnification by Customer

Each Customer shall indemnify and hold Direct Energy RS and its employees, agents and contractors harmless from and against any claim for any loss, damage, expense, charge, cost, penalty or other liability of any kind suffered or incurred by Direct Energy RS (including charges or liability arising under ATCO Electric's Distribution Tariff) arising out of or in any way connected with any failure by the Customer or its Facilities to comply with any of the provisions of ATCO Electric's Distribution Tariff applicable to the Customer or its Facilities or any legal or regulatory requirement related to Distribution Access Service required to be complied with by the Customer.

Without limiting the generality of the foregoing, Customer shall be liable to compensate Direct Energy RS for any costs, expenses or liabilities that it incurs under the provisions of the ATCO Terms and Conditions arising out of or connected with any action or inaction of the Customer related to Regulated Rate Service.

9.5 Indemnification by Direct Energy RS

Direct Energy RS shall indemnify and hold a Customer harmless from and against direct physical loss, injury or damage to the Customer or the Customer's property resulting from the negligence or willful misconduct of Direct Energy RS or its employees, agents or contractors acting within the scope of their employment. Under no circumstances or for any reason shall Direct Energy be liable to a Customer for any loss, injury or damage of an indirect, special, exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss, damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for indemnity for loss, injury or damage, must be filed with Direct Energy RS within 180 days from the date of occurrence of the incident that is the subject of the claim, failing which Direct Energy RS shall have no obligation to indemnify the Customer for any such loss, injury or damage.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Resolution by Direct Energy RS and Customers

If any dispute between Direct Energy RS and a Customer arises at any time in connection with these Terms and Conditions, Direct Energy RS and the Customer, acting reasonably and in good faith, shall use their reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this Section 10.1, a senior representative of Direct Energy RS and the Customer shall meet to attempt to resolve the dispute.

10.2 Resolution by a Third Party

If any dispute has not been resolved pursuant to Section 10.1 within a reasonable time, Direct Energy RS and the Customer may pursue the matter with the Board if the matter is within the Board's jurisdiction or pursue in Alberta any remedies available to them under applicable laws, including arbitration pursuant to the *Arbitration Act (Alberta)*.

ARTICLE 11
MISCELLANEOUS

11.1 Compliance with Applicable Legal Authorities

Direct Energy RS and the Customer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of the Independent System Operator or of governmental authorities having applicable jurisdiction. Direct Energy RS will not be required to violate, directly or indirectly, or become a party to a violation of any requirement of the Independent System Operator or any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Regulated Rate Service to any Customer. Direct Energy RS' obligation to provide any Regulated Rate Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the Regulated Rate Service will have been obtained and will be in force during the period of Regulated Rate Service.

11.2 No Assignment

Service under the Regulated Rate Tariff is not assignable.

11.3 No Waiver

The failure of Direct Energy RS to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions or applicable legislation, or to enforce any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder or thereunder, which shall remain in full force and effect. No term or condition or breach of these Terms and Conditions shall be waived unless the waiver is in writing and duly executed by an authorized officer of Direct Energy RS.

Price Schedule

1.	Account Connection Charge (Section 4.1)	Amount of any applicable ATCO Electric charge plus $10.00
2.	Reconnection Charge (Section 8.4)	Amount of any applicable ATCO Electric charge plus $25.00
3.	Meter Reads, Supplementary Meter Reads or Meter Disputes	Amount of any applicable ATCO Electric charge
4.	Interval Meter Usage Data	Amount of any applicable ATCO Electric charge
5.	Dishonored Cheque	$25.00

APPENDIX 3 – CORRECTIONS MADE TO THE DRT T&C (APPENDIX 1) AND RRT T&C (APPENDIX 2)

DRT T&C

Section 8.7:
The sentence that reads: "Forty dollars in if the denomination is two dollars…."

is changed to read: "Forty dollars if the denomination is two dollars…"

The Price Schedule:
The reference to #2 Reconnection Charge is changed from (Section 8.5) to (Section 8.4).

RRT T&C

Section 8.1:
The sentence that reads: "A bill issued to the Customer by Direct Energy RS shall be paid in full by the due date specified on the bill, such due sate not to be less than…"

is changed to read: "A bill issued….such due date not to be less than…"

Section 8.7:
The sentence that reads: "Forty dollars in if the denomination is two dollars…."

is changed to read: "Forty dollars if the denomination is two dollars…"

The Price Schedule:
The reference to #2 Reconnection Charge is changed from (Section 8.5) to (Section 8.4).